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P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • <http://www.hro.house.state.tx.us>

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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 23, 2013
83rd Legislature, Number 57
The House convenes at 10 a.m.

Fifteen bills are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

One postponed bill, HB 502 by Hernandez Luna, is on the supplemental calendar for second-reading consideration today. The bill analysis is available on the HRO website at <http://www.hro.house.state.tx.us/pdf/ba83R/HB0502.PDF>.

The House Appropriations Committee has a formal meeting scheduled for 8:30 a.m. in Room 1W.14 (Agricultural Museum). The Appropriations subcommittee on Budget Transparency and Reform has a public hearing scheduled in Room E1.030 for the later of 2 p.m. or on adjournment of the Committee on Appropriations.

The following House committees had public hearings scheduled for 8 a.m.: Natural Resources in Room E2.010 and Transportation in Room E.2012. The Public Education Committee has a public hearing scheduled on adjournment in Room E2.036. The following House committees have public hearings scheduled for 10:30 a.m. or on adjournment: Criminal Jurisprudence in Room E2.016; Environmental Regulation in Room E1.026; and Human Services in Room E2.030. The Licensing and Administrative Procedures Committee has a public hearing scheduled for noon or on adjournment in Room E1.010. The Business and Industry Committee has a public hearing scheduled for 1:30 p.m. or on adjournment in Room E2.014. The Insurance Committee has a public hearing scheduled for 2 p.m. or on adjournment in Room E2.026.



Bill Callegari
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, April 23, 2013

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SUBJECT: Continuing the Texas Lottery Commission

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles
0 nays
2 absent — Price, S. Thompson

WITNESSES: For — Philip Sanderson, Texas Charity Advocates; (*Registered, but did not testify*: Doug DuBois, Jr., Texas Food & Fuel Association)

Against — Rob Kohler, Christian Life Commission Texas Baptists, David Smith; Juanita Wallace; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)

On — Gary Grief and Sandra Joseph, Texas Lottery Commission; (*Registered, but did not testify*: Stephen Fenoglio, River City Bingo Charities, K&B Sales, Inc. dba Goodtime Action Games, State AmVets Department of Texas and its member posts; Amy Trost, Sunset Advisory Commission)

BACKGROUND: In 1991 Texas voters approved a constitutional amendment authorizing a state lottery, and in 1993 the 73rd Legislature created the Texas Lottery Commission. The commission oversees the state lottery and charitable bingo.

The commission has three public members who are appointed by the governor with the advice and consent of the Senate for six-year, staggered terms. One commission member must have bingo industry experience.

The commission licenses lottery retailers, markets lottery games, conducts lottery drawings, and awards lottery winnings. It also manages contracts for lottery operations, advertising, and instant ticket production.

The Lottery Commission has about 309 employees, with almost 90 percent of them working on lottery operations and services and the rest on

charitable bingo, which the commission regulates under Occupations Code, ch. 2001. Since 1981, state licensed nonprofit organizations in Texas have been allowed to conduct bingo games following voter approval in local elections.

Through its bingo division, the commission licenses the nonprofit organizations that conduct bingo games, lessors of bingo halls, manufacturers and distributors of bingo supplies, and others. The commission regulates prizes, accounting methods, and other details of the games and collects bingo taxes and prize fees. About 1,140 organizations currently are authorized to conduct bingo games, and there are about 400 commercial lessors who lease bingo locations to the charities.

In fiscal 2011, the commission received \$214 million, including \$199 million from the general revenue dedicated lottery account for lottery operations and \$14.9 million in general revenue for bingo regulation. Of the general revenue appropriation, about \$12.5 million was in bingo prize fees, which are passed through to local governments and the rest was used for bingo administration.

DIGEST:

CSHB 2197 would continue the Lottery Commission until September 1, 2025. The bill would increase the size of the commission, require the commission to approve certain contracts, and require the commission to produce a comprehensive business plan. It would also make changes to the laws governing charitable bingo relating to bingo licensing and registration fees, inspections and auditing, and licensing practices.

The bill would apply or update standard Sunset provisions dealing with public membership, conflicts of interest, board member training, grounds for removal from the commission, separation of duties of policy making and management, negotiated rulemaking and alternative dispute resolution policy, public participation, and complaints.

CSHB 2197 would take effect September 1, 2013, and the commission would be required to adopt rules, policies, and procedures required by the bill by January 1, 2014.

Commission size. CSHB 2197 would increase the size of the lottery commission from three to five members. Members would hold staggered, six-year terms. The governor would be required to appoint two additional commission members as soon as practicable after the bill's effective date.

Commission approval of major contracts. The bill would require the commission to review and approve all major procurements. The commission would have to establish procedures to determine what would be considered a major procurement, based on the value of the contract and other factors. The commission could give the agency executive director the authority to approve non-major procurements.

Comprehensive business plan. CSHB 2197 would require the commission to develop a comprehensive business plan. The plan would have to include agency goals and an evaluation of specific items such as agency performance and the effectiveness of programs and initiatives. The plan would be adopted by September 1, 2014, and would be discussed annually at a public meeting following review by the commission.

Other lottery provisions. CSHB 2197 would require that hearings on the denial, suspension, and revocations of sales agent licenses be conducted by the State Office of Administrative Hearings (SOAH).

The bill would eliminate a requirement that the commission produce a report on each lottery game showing tickets sold and prizes awarded.

Bingo fees. CSHB 2197 would remove statutory fees for manufacturers and distributors licenses and instead require the commission to set the fees in amounts reasonable to defray administrative costs. The commission would be authorized to set the fee for amending a license, rather than the current \$10 statutory fee.

The bill would authorize the commission to set a fee for applications for bingo worker registry.

Authorization would remain for bingo licensees to pay for a two-year license, but the option of paying in two installments would be eliminated. The bill also would remove a requirement that bingo manufacturers and distributors pay a \$1,000 fee in addition to their renewal fee to obtain a two-year license.

Bingo inspections and audits. CSHB 2197 would require the commission to prioritize bingo inspections based on risk factors, including the amount of money derived from bingo, the compliance history of the premises, and the time since the last inspection.

The commission also would be required to use risk analysis to identify which licensees would be at risk of violating the law or commission rules and to develop a plan to audit those licensees.

Bingo licensing practices. CSHB 2197 would make several changes to the laws governing the commission's bingo licensing practices. The commission would be required to adopt rules for the bingo license renewal process.

The commission would be required to adopt rules governing its current authority to temporarily suspend a bingo license. It would be authorized to place on probation persons whose license or registration were suspended and to take certain actions when probating a license or registration, including limiting a licensee's activities or requiring regular reporting to the commission. The bill would allow the commission to consider financial loss to the state as a criterion when considering temporarily suspending a bingo license.

The bill would require SOAH to conduct hearings on the denial, revocation, and suspension of bingo licenses and hearings related to administrative penalties.

CSHB 2197 would require the commission to comply with Occupations Code, ch. 53 requirements that cover the handling of criminal convictions in licensing. The provisions would have to be used when issuing or renewing a bingo license and listing workers on the bingo workers registry. The bill would remove requirements that bingo licenses be denied to persons convicted of crimes of moral turpitude, defined by the Bingo Act, if it were within the 10 years of the termination of a sentence or the end of probation or parole for the offense.

The bill would require the commission by rule to adopt a schedule of sanctions for violations of the Bingo Act and to ensure that the sanctions were appropriate to the violation.

**SUPPORTERS
SAY:**

The Lottery Commission should be continued because it has been successful in accomplishing its mission of generating revenue for the state, with more than \$13.6 billion going to Foundation School Fund, \$5.3 billion to the general revenue fund, \$160 million to teaching hospitals that support indigent health care, and \$16 million to the Texas Veterans

Commission.

The Lottery Commission is the best entity to continue to operate the state lottery and to oversee charitable bingo. The commission has the expertise and organizational structure to continue these tasks efficiently. Moving these duties to other entities would be inefficient and not result in significant cost savings to the state.

The lottery is a voluntary source of entertainment with broad appeal, which is illustrated by a 2012 study showing that lottery players do not have lower incomes than non- players. Texans have weighed concerns about the lottery relating to social welfare and other issues, and many have chosen to show their support for the game and the state funds it raises by continuing to play.

Expanding commission size. The size of the commission should be expanded because its operation of the lottery and regulation of charitable bingo is hampered by having only three members. The commission's small size makes it difficult to use subcommittees to divide its workload and to develop expertise. In addition, in the absence of one commissioner, the other two cannot informally discuss the work of the agency without potentially violating the state's Open Meetings Act.

Expanding the commission to five members would allow it to work more effectively and efficiently. One spot would continue to be reserved for a bingo representative, and others would remain unrestricted so that the commission could have a broad base of expertise. A larger commission would be in line with most other state agency governing boards and lottery oversight bodies in other states.

Commission approval of major contracts. CSHB 2197 would increase the accountability of the lottery commission by requiring it to approve major contracts. Currently, contracting authority rests solely with the executive director, thereby reducing the commission's responsibility in this critical area that includes some of the largest businesses decisions in state government. Giving procurement oversight to the commission would allow commissioners to confirm that the contracting process was sound and would make the agency's practices consistent with those of other state agencies.

Comprehensive business plan. By requiring the commission to formally

implement a business plan — something it has been doing informally — CSHB 1297 would ensure that the agency had an ongoing, statutory requirement to evaluate its performance, operations, and efficiency. The agency would benefit from a business plan that includes consistent analysis, reporting, and goal setting. The bill would ensure agency accountability to the public by requiring that at least annually the commission held a public meeting to discuss the plan.

Other lottery provisions. Requiring that certain hearings be conducted by SOAH would put in statute the current practice of the commission and ensure that the commission's procedures continued to conform with commonly applied licensing practices.

The bill would abolish one of the commission's nine required reports because gathering the information it provides on ticket sales and prizes is impractical and is provided to the public by the commission in other more useful and accessible ways.

The current 5 percent minimum commission paid to retailers who sell lottery tickets is consistent with other states. In addition to the 5 percent sales commission, retailers can take part in sales agent incentives established by the Lottery Commission.

Bingo fees. Currently, the licensing fees charged by the commission are inflexibly set in the statutes, resulting in fees that do not cover the cost of regulation. In addition, the commission cannot charge fees for some of its regulation. CSHB 2197 would address this issue by removing the statutory fees and allowing the commission to set fees to cover the cost of regulation. In addition, the bill would authorize a new fee to cover the commission's cost of adding workers to the registry. These changes would be consistent with authority given to other regulatory agencies and would help provide the commission with the necessary resources to regulate bingo.

Fees would be set through the commission's rule process that would include numerous opportunities for input from the public and the bingo industry. Legislative oversight would ensure that fees remained reasonable.

Bingo inspections and audits. CSHB 2197 would increase the effectiveness and efficiency of the commission's bingo inspections and

audits by requiring them to be based on risk analysis. Currently, the commission does not have a targeted approach to inspections and audits, which means that scarce resources may not be used where they are most needed. The bill would address this problem by requiring the commission to develop and use risk analysis for inspections and audits.

Bingo licensing practices. Changes in CSHB 2197 would improve the efficiency of bingo regulation, give the agency more flexibility, and conform the commission to commonly applied licensing practices. For example, the bill would require the commission to create a standard renewal process and authorize the commission to place suspended licensees on probation.

Other changes would conform the commission's licensing practices to model licensing standards identified by the Sunset commission staff, including requiring hearings to be held by SOAH and requiring the commission to develop complaint procedures. Although the commission currently uses SOAH for its bingo hearings, CSHB 2197 would ensure these functions remained independent and fair.

The bill would require the commission to use the standards in the Occupations Code, ch. 53 when examining criminal convictions during bingo licensing or registration. This would ensure that the commission made appropriate decisions about granting and denying licenses according to state guidelines to evaluate offenses as they relate to the responsibilities of a licensee.

The term "crimes of moral turpitude," which currently is used in the Bingo Act to preclude the issuance of licenses, could be interpreted too broadly, even with the definitions in the statute. For example, the statutory definition includes all felonies, something that might be inappropriate as it relates to a bingo license. Current provisions prohibiting license for persons convicted of gambling or criminal fraud would remain.

OPPONENTS
SAY:

Texas should abolish the Lottery Commission to end the state's involvement in running and promoting gambling. The lottery is a predatory gambling business that results in a regressive tax often paid by the poorest and least educated. The state funds that the lottery has raised do not outweigh its negative impact on social welfare or that fact that it has failed to provide a real increase in education funding. State revenue for public schools can be raised in other ways, such as increasing taxes on

alcohol.

Commission size. If the commission is to be expanded, it might be best to have at least some slots designated for commissioners with certain types of expertise. For example, members could be required to have extensive lottery playing experience, represent low-income persons, or represent lottery retailers. Other state oversight boards often have specific requirements for membership.

Bingo fees. CSHB 2197 could result in increased fees on those involved with charitable bingo. The bill would remove the fixed, statutory license fees, which could allow the commission to increase fees to an inappropriate or burdensome level. For example, according to the fiscal note, the fee to amend a license is projected to increase from the current \$10 to \$25. In addition, the bill would authorize a new fee, estimated in the fiscal note to be \$25, for initial bingo worker registration. Organizations involved in charitable bingo are often small, local groups that should not be subject to high licensing fees. Higher licensing fees could translate to less money for charitable purposes.

Bingo licensing practices. CSHB 2197 should not remove the current language prohibiting persons who have been convicted of crimes of moral turpitude from being licensed or involved with bingo. The Bingo Act defines crimes of moral turpitude so that it is clear in the statute what crimes would prohibit a license, including any felony. It is best to keep this structure rather than allow the commission to work under the Occupations Code to make decisions about crimes that preclude licenses. Bingo activities can involve large amounts of cash, and removing this established prohibition on crimes of moral turpitude could establish a dangerous framework for licensing.

OTHER
OPPONENTS
SAY:

Other lottery provisions. CSHB 2197 should include an increase in the current 5 percent statutory commission that lottery retailers receive for selling tickets. This would help retailers better cover the cost of selling the tickets, which generate state revenue.

NOTES:

The committee substitute differs from the original bill only in the language proposed for the caption, which refers to changing fees as well as imposing them.

The companion bill, SB 210 by Huffman, has been referred to the Senate

State Affairs Committee.

According to the fiscal note, CSHB 2197 would result in an annual increase to the state in fee revenue of \$145,027.

SUBJECT: Limiting the period TDLR may regulate industrial housing

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Smith, Kuempel, Geren, Guillen, Price
0 nays
4 absent — Gooden, Gutierrez, Miles, S. Thompson

WITNESSES: For — D. J. Pendleton, Texas Manufactured Housing Association
Against — None
On — (*Registered, but did not testify:* William Kuntz, Texas Department of Licensing and Regulation)

BACKGROUND: Occupations Code, sec. 1202.203 requires a municipal building official or approved third-party inspector to inspect industrialized housing, including construction of the foundation system and the erection and installation of modular components on the foundation. This inspection is carried out at the permanent site of the industrialized housing.

Under sec. 1202.002, “industrialized housing” is defined principally as a residential structure constructed in one or more modules or components, built at a location other than the permanent site, and designed for use as a permanent residence when the pieces are transported and erected or installed on a permanent foundation system.

DIGEST: CSHB 578 would impose a limit of two years after the final inspection for certain state officials to perform an inspection or investigation, open a complaint, or initiate an administrative or enforcement action against a builder, manufacturer, or third-party inspector of industrialized housing. Penalties imposed or enforcement actions taken against builders, manufacturers, or third-party inspectors would have to be initiated during this two-year period.

The bill would take effect September 1, 2013, and would apply only to

complaints, actions, penalties, or sanctions initiated on or after that date.

**SUPPORTERS
SAY:**

This bill would encourage the construction of industrialized housing, also known as modular homes, in the state. This construction creates jobs and homes for Texans, and establishing this time limit for inspections and enforcement actions would lift a burden on manufacturers and builders of industrialized housing.

Complaints, investigations, and enforcement activities arising two years after the last on-site inspection are rare. However, these inspections hold the houses to initial building codes and may fail to take into account possible wear and tear, subjecting manufacturers to potential fines that average about \$1,000 but under statute may reach \$5,000 a day. The bill would not eliminate current inspections that take place at the factory and on-site after installation.

Under the bill, homeowners still would have a right to pursue a civil court action or enter into arbitration against a manufacturer of industrialized housing for any defects or misrepresentations that came to light two years after the final on-site inspection.

**OPPONENTS
SAY:**

CSHB 578 could weaken consumer protections by limiting the ability of the Texas Department of Licensing and Regulation to take action against an industrialized housing manufacturer should major defects come to light many years after a home's initial construction.

While an owner of an industrialized home may have recourse by bringing a civil suit or other legal action against a manufacturer, this is an expensive and time-consuming process.

NOTES:

The committee substitute differs from the bill as filed in that would:

- move the final date for these investigations to the second anniversary of the last on-site inspection, rather than the first anniversary;
- add the executive director to those who could not inspect, investigate, or initiate inspection action of industrialized housing entities more than two years after the initial required on-site inspection;
- allow the Commission of Licensing and Regulation or the

department's executive director to impose a penalty or sanction only if the enforcement action was initiated in the two-year period after the last on-site inspection; and

- delete a number of provisions to enable design review agencies or councils to approve whole plans and designs, rather than place a stamp of approval on each page of the plans and designs.

The companion bill, SB 672 by Carona, was passed by the Senate on April 3 by a vote of 31-0 and referred to the House Committee on Licensing and Administrative Procedures on April 16.

SUBJECT: Mosquito abatement on abandoned or foreclosed residential property

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez
0 nays
2 absent — Anchia, Sanford

WITNESSES: For — Craig Pardue, Dallas County; Ender Reed, Texas Association of Counties; Zachary Thompson, Dallas County Health and Human Services; (*Registered, but did not testify:* Windy Johnson, Texas Conference of Urban Counties; TJ Patterson, City of Fort Worth; David Reynolds, Texas Medical Association; Sonya Hughes)

Against — None

BACKGROUND: Health and Safety Code, Sec. 341.011(7), designates as a public health nuisance a “collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection’s location,” other than property used to produce agricultural crops.

DIGEST: HB 832 would allow a public official, agent, or employee of a city, county, or other local health authority to enter, without notice, the premises of a residence that was presumed to be abandoned or uninhabited due to foreclosure to inspect, investigate, and treat with larvicide any stagnant water in which mosquitoes were breeding that posed an immediate danger to the health, life, or safety of any person.

The person entering the premises would post on the front door of the residence:

- the identity of the treating authority;
- the purpose and date of the treatment;
- a description of the areas of the property treated with larvicide;

- the type of larvicide used; and
- any known risks of the larvicide to humans or animals.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 832 would give another tool to counties and municipalities to proactively treat mosquito breeding grounds immediately without waiting for a court order to enter foreclosed or abandoned residential property. The bill would not require officials to notify owners of abandoned or foreclosed homes before entering the premises because delaying treatment could increase the risk of West Nile virus infection for everyone in the neighborhood. Mosquitoes have a short life cycle, which makes immediate treatment necessary.

HB 832 could help save lives by reducing the spread of mosquitoes that carry West Nile virus in Texas. In 2012, 36 people died from severe West Nile infections in a four-county area of North Texas. At the same time, a large number of homes in North Texas were abandoned or foreclosed, leaving stagnant swimming pools or other standing water to become breeding grounds for mosquitoes.

HB 832 would allow local health authority employees to enter the premises of abandoned or foreclosed residences for the sole purpose of inspecting, investigating, and treating stagnant water with mosquito larvicide. Early treatment would reduce the risk for the virus by preventing mosquitoes from breeding or eliminating them at the larval stage.

Under the bill, property owners still would be notified of any mosquito treatment on their property. The larvicide used by Dallas Health and Human Services is not a pesticide, but a growth inhibitor and bacteria that prevents mosquito larvae from developing into adult mosquitoes.

Local governments would cover the cost of the larvicide as part of their mosquito control or public health programs. The bill would not result in costs to the state.

**OPPONENTS
SAY:**

HB 832 would set a dangerous precedent by allowing local governments to enter residential property without notice or a warrant. Local governments know mosquito season happens at the same time each year.

Even large cities like Dallas and Fort Worth would have ample time before mosquito season started to go through the usual procedure to secure a court order or warrant to enter a property. While mosquito breeding grounds should be treated as soon as possible to reduce public health risks, at the very least the last owner on record should receive notice before the county or city entered the property.

NOTES:

The companion bill, SB 186 by Carona, passed the Senate by a vote of 28-3 on March 12 and has been referred to the House Urban Affairs Committee.

SUBJECT: Combining home loan programs into the Homes for Texas Heroes program

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 5 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez

0 nays

2 absent — Anchia, Sanford

WITNESSES: For — (*Registered, but did not testify*: Steve Bresnen and Mike Higgins, Texas State Association of Fire Fighters; Ramiro Canales, Texas Association of School Administrators; Monty Exter, The Association of Texas Professional Educators; Daniel Gonzalez and Chelsey Thomas, Texas Association of Realtors; Dwight Harris, Texas AFT; Chris Jones, Combined Law Enforcement Associations of Texas; Joyce McDonald, Frameworks Community Development Corporation; Scott Norman, Texas Association of Builders; Deena Perkins, Texas Association of Community Development Corporations; Charley Wilkison, Austin Police Association, Travis County Sheriff's Officers Association, Combined Law Enforcement Associations of Texas)

Against — None

On — David Long and Paige Omohundro, Texas State Affordable Housing Corporation

BACKGROUND: Government Code, sec. 2306.562, which authorized the Professional Educators Home Loan Program, expired September 1, 2012. The Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program, nicknamed "Homes for Heroes," is set to expire September 1, 2014.

The Texas State Affordable Housing Corporation receives 10 percent of the state ceiling for qualified mortgage bonds to administer both programs. Until the Professional Educators Home Loan Program expired, TSAHC reserved 45.5 percent of its bond allowance for the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program and 54.5 percent for the Professional

Educators Home Loan Program.

Through the two programs, TSAHC offers mortgage loans with a 30-year fixed interest rate (3.75 percent as of April 2013) and provides down payment and closing cost assistance grants equal to 5 percent of the loan amount for first time homebuyers. To be eligible, participants must be Texas residents with an income up to 115 percent of area median family income, adjusted for family size, or the maximum amount permitted by Section 143 (f), Internal Revenue Code of 1986, whichever is greater.

Members of the following professions are eligible for the “Homes for Heroes” program: fire fighters, corrections officers, county jailers, public security officers, peace officers, and emergency medical services personnel. The Professional Educators Home Loan Program served members of the following professions: classroom teachers, teacher’s aides, school librarians, school counselors, school nurses, and allied health or professional nursing program undergraduate or graduate faculty members.

DIGEST:

HB 1029 would add professions previously included under the Professional Educators Home Loan Program to the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program under one formal name: the Homes for Texas Heroes Home Loan Program.

HB 1029 would allow all eligible borrowers under the combined program to access the same pool of mortgage bonds. The following professions would be eligible for the combined program: fire fighters, corrections officers, county jailers, public security officers, peace officers, emergency medical services personnel, and professional educators, including classroom teachers, teacher’s aides, librarians, counselors, school nurses and allied health or professional nursing program undergraduate or graduate faculty members.

HB 1029 would repeal sections of the Government Code providing for two separate loan programs.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS

HB 1029 would ensure that the state’s heroes, from fire fighters to

SAY:

classroom teachers, could afford a home by continuing the two professional home loan programs together as the combined Homes for Texas Heroes program. As public servants, compensation for these individuals often does not equate with the service they provide to their communities. The program also would give underserved communities an additional tool for recruiting and retaining qualified public servants.

The two home loan programs did not receive state appropriations when separate, and the combined Homes for Texas Heroes program likewise would not receive any state appropriations. The bonds issued to fund the program are not general obligation bonds. Instead, they use mortgage-backed securities as collateral, and the bonds are paid back as borrowers pay off their mortgages.

Combining the two programs simply would allow the Texas State Affordable Housing Corporation to reduce marketing and outreach costs as well as bond application fees, attorney fees, and closing costs associated with running two loan programs instead of one. The combined program would not alter how the original programs functioned or who could enroll.

A combined, low-interest home mortgage loan program would streamline marketing and improve effectiveness of program outreach while making the formal name “Homes for Texas Heroes” easier for realtors, lenders, and borrowers to remember. The Texas State Affordable Housing Corporation has referred to the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program as “Homes for Heroes” for years. HB 1029 simply would allow the agency to formally apply the name to both programs.

HB 1029 would not disrupt the agency’s ability to divide funds between certain professions within the program as necessary. TSAHC has been able to meet demand for the program under the state ceiling for bond allowance and has not had issues with abuse of the program by public servants.

OPPONENTS
SAY:

HB 1029 would not resolve the fact that the two home loan programs did not have a job tenure requirement for eligibility. There remains a risk that loan dollars would be spent on individuals who entered public service only to take advantage of a low-interest loan and then left their jobs shortly thereafter. Any continuation of the program should include a statutory safeguard against such abuse.

NOTES:

The identical companion, SB 286 by Hinojosa, passed the Senate by 31-0 on April 11 on the Local and Uncontested Calendar and has been referred to the House Urban Affairs Committee.

SUBJECT: Transferring authority to operate a water utility in a certain city

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Smithee, Sylvester Turner

0 nays

3 absent — Hilderbran, Menéndez, Oliveira

WITNESSES: For — Alan Hooks, City of Blue Mound; James Schiele, Eagle Mountain - Saginaw ISD; (*Registered, but did not testify*: Dan Barrett, City of Blue Mound; Shanna Igo, Texas Municipal League)

Against — Charles Profilet, SouthWest Water Company

On — (*Registered, but did not testify*: Doug Holcomb, TCEQ)

BACKGROUND: A certificate of convenience and necessity (CCN) is issued by the Texas Commission on Environmental Quality (TCEQ). It authorizes a utility to provide water or sewer utility service to a specific area and obligates the utility to provide continuous and adequate service to every customer who requests service in the area.

According to the 2010 U.S. Census, Tarrant County is the only county in Texas with a population of 1.7 million or more that contains two cities with populations of 300,000 or more.

DIGEST: HB 1160 would require TCEQ to transfer a CCN for water and wastewater service to a certain city if it prevailed in a condemnation proceeding to acquire an investor-owned utility's assets within the city. The transfer would be effective on the date the court in the condemnation proceeding issued an order transferring the property of the investor-owned utility and requiring the city to ensure continuous and adequate water and sewer service to the city's residents.

The bill would apply to a city with a population less than 2,500 in Tarrant County where the investor-owned utility provides service to the entire city

and charges rates for 5,000 gallons of water to residential customers at rates at least 50 percent higher than those charged by municipally owned utilities in other parts of the county (Blue Mound).

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 1160 would ensure that the City of Blue Mound's water and sewer utility continued to operate after the completion of condemnation proceedings against an investor-owned water and sewer utility. While TCEQ normally can process uncontested CCN applications in 180 days or less, contested CCN transfers can take much longer and parties can incur costs exceeding \$100,000. HB 1160 would ensure the immediate transfer of the CCN to Blue Mound after the completion of the condemnation proceeding, saving the ratepayers money and time and ensuring that water and wastewater utility service to the city's residents was not disrupted.

HB 1160's scope would be limited. It is a local bill that would affect only the City of Blue Mound. It would not affect other governments or investor-owned utilities, nor would it affect the ongoing condemnation procedure.

Residents of Blue Mound pay water rates that are 300 percent greater than those of some neighboring cities. Blue Mound is not a wealthy community, with the average home valued at \$60,000. Its residents cannot afford to pay the exorbitant rates charged by Monarch Utilities. By operating its own utility, the City of Blue Mound could lower rates.

Some critics argue that the only reason cities can charge lower rates is because their services are subsidized by taxpayers. This is not the case. In fact, Blue Mound's neighbor, Fort Worth, structures its utility rates to recover costs. No general fund or taxes subsidize Fort Worth's utility.

HB 1160 would help ensure that local officials could start working together immediately to address safety concerns. In the past, fire hydrants have been inoperable and the investor-owned utility did not notify the school district of a boil-water notice related to unsafe drinking water for a day and a half. These issues are best handled by local officials.

OPPONENTS
SAY:

HB 1160 would undercut the opportunity of a private business to earn a profit on its investment. SouthWest Water Company, which owns Monarch Utilities, has invested \$70 million in infrastructure improvements in the state in the last seven years. The company is entitled to a fair and reasonable rate of return on those investments. Many of the improvements were made to correct violations that were found when SouthWest Water Company purchased other companies. Recently, Monarch invested \$100,000 to rehabilitate a water well within the city and made improvements to the sewer system.

Monarch Utilities has filed two rate applications since acquiring the Blue Mound system in 2005. TCEQ approved a settlement between Blue Mound and Monarch Utilities in May 2012 and found that the rate structure was reasonable and adequate to allow the utility to recover the costs of providing the service.

It is unfair to compare an investor-owned utility's rate structure with that of a municipally owned utility because city-owned utilities subsidize water and wastewater infrastructure with taxes.

OTHER
OPPONENTS
SAY:

The bill should follow TCEQ's existing procedures for transferring CCNs. TCEQ's system ensures that before a CCN is awarded, the applicant has financial, managerial, and technical expertise to administer a water supply or waste water utility.

SUBJECT: Creating an exoneration commission to investigate wrongful convictions

COMMITTEE: Criminal Jurisprudence — favorable, as amended

VOTE: 7 ayes — Herrero, Burnam, Canales, Leach, Moody, Schaefer, Toth
1 nay — Carter
1 absent — Hughes

WITNESSES: For — Alison Dieter, Texas Moratorium Network; Joshua Houston, Texas Impact; Kathryn Kase, Texas Defender Service; Travis Leete, Texas Criminal Justice Coalition; Johnnie Lindsey and Christopher Scott, House of Renewed Hope; Jaimie Page, Texas Exoneree Project; Cory Session, Tim Cole's brother, Innocence Project of Texas; Charles Chatman; Entre Karage; Johnny Pinchback; Sandra Pinchback; Billy Smith

(*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference, the Roman Catholic Bishops of Texas; Allen Place, Texas Criminal Defense Lawyers Association; Leah Cohen; Claude Simmons, Jr.)

Against — (*Registered, but did not testify:* Justin Wood, Harris County District Attorney's Office)

On — Jim Bethke, Texas Indigent Defense Commission; Shannon Edmonds, Texas District and County Attorneys Association

DIGEST: HB 166, as amended, would create the Timothy Cole Exoneration Review Commission. The bill would establish the commission's duties and authority and outline its operations. The commission would be subject to the Texas Sunset Act and would be abolished September 1, 2025, unless continued by the Legislature.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

Commission composition. The governor would appoint the commission's nine members, who would serve staggered, six-year terms. The commission would elect its own presiding officer. Appointments to the commission would have to be made within 60 days of HB 166's effective date.

Duties. The commission would be required to thoroughly review or investigate each case in which an innocent person was convicted and exonerated, including convictions based on a plea to time served, to:

- identify the causes of wrongful convictions;
- determine errors and defects in the laws, rules, proof, and procedures used to prosecute a case or implicated by each cause of a wrongful conviction;
- identify errors and defects in the criminal justice process;
- consider and develop solutions to correct errors and defects; and
- identify procedures, programs, and educational or training opportunities to eliminate or minimize the causes of wrongful convictions and to prevent wrongful convictions and resulting executions.

The commission also would be required to review thoroughly each application for a writ of habeas corpus made to the Texas Court of Criminal Appeals if the court had issued a final ruling. (Habeas corpus is a writ ordering a person in custody to be brought before a court and places the burden of proof on those detaining the person to justify the detention.) The review would be to:

- identify ethical violations or misconduct by attorneys or judges revealed during the habeas review;
- refer ethical violations and misconduct to the State Commission on Judicial Conduct, the State Bar of Texas, the Office of the Attorney General, or other appropriate offices;
- identify patterns of ethical violations or misconduct by attorneys or judges or errors or defects in the criminal justice system that impact the habeas review process;
- consider and develop ways to correct the patterns, errors, and defects; and
- identify procedures, programs, and educational or training opportunities to eliminate or minimize the patterns, errors, and defects.

The commission would have to consider potential implementation plans, costs, savings, and the impact on the criminal justice system for each potential solution it identifies.

The commission would have to compile an annual report of its findings and recommendations and could compile interim reports. Commission reports would have to be available to the public upon request. Reports would have to be submitted to the governor and the Legislature by December of even-numbered years or within 60 days of issuance, whichever occurred first.

At least annually, the commission would have to conduct a public hearing that included a review of its work. The commission would have to meet in Austin at least once a year but could meet at other times and places.

The working papers and records of the commission and its staff would be exempt from public disclosure requirements.

The findings and recommendations in official reports could be used as evidence in subsequent civil or criminal proceedings, according to the procedural and evidentiary rules that applied to that proceeding.

Commission operations. The University of Texas at Austin and the Legislative Budget Board would be required to assist the commission. The commission could request assistance of other state agencies and officers, which would have to assist the commission if requested. The commission could inspect the records, documents, and files of state agencies.

The commission would be able to enter into contracts for necessary and appropriate research and services to facilitate its work or to investigate a case in which there had been an exoneration or final adjudication of a habeas corpus, including forensic testing and autopsies.

The commission could accept gifts, grants, and donations but would have to do so in an open meeting and report each item in its public records. From the grants it accepted, the commission could disburse subgrants for programs, services, and activities related to the commission's purpose and activities.

HB 166 would establish operating requirements for the commission,

including member qualifications, conflicts of interest, grounds for removal, and commission member training. Commission members could not hold any other public office or be state employees or registered lobbyists. Commission members would not be compensated, but could be reimbursed for expenses.

The commission would not be subject to Government Code provisions governing state agency advisory committees.

**SUPPORTERS
SAY:**

HB 166 is necessary to address the state's problem of wrongful criminal convictions. The wrongful conviction and imprisonment of any innocent person is a miscarriage of justice that carries with it a moral obligation to prevent additional miscarriages of justice. The bill would be the next step after the Timothy Cole Advisory Panel, created by the 81st Legislature to advise the state's Task Force on Indigent Defense in studying wrongful convictions, which finished its assignment in August 2010.

In Texas, there have been at least 119 exonerations after wrongful convictions, according to the National Registry of Exonerations. Many of these inmates served decades in prison before being exonerated through DNA evidence or on other grounds. The tragedy of wrongful convictions extends beyond those who are irreparably harmed to society as a whole. A wrongful conviction may mean that a guilty person remains unpunished, endangering the public and eroding confidence in the criminal justice system.

Wrongful convictions also are costly to the state, not only in the approximately \$60 million that the state has paid out in compensation to the innocent but also for the public funds wasted on the prosecution and incarceration of innocent people.

HB 166 would address the issue of wrongful convictions by establishing a body to investigate wrongful convictions, identify what went wrong and why, examine the criminal justice system as a whole, and recommend changes. An exoneration commission could investigate cases similarly to the way the national safety board investigates transportation accidents.

The commission would not work to obtain exonerations but would examine only cases which had already reached their final outcome. It would review exonerations and cases with final rulings involving writs of habeas corpus sent to the court of criminal appeals. The commission's

work would include reviewing the writs, which are a type of appeals typically centered on constitutional rights, for patterns that may identify the causes of wrongful convictions because there is no current policy or procedure that requires any overall review or action based on issues raised in these writs. Since the state's clemency system can be slow, the bill would not limit the commission's authority to investigating only persons who had been formally pardoned.

The need for an innocence commission is not eliminated because certain facets of the criminal justice system, such as indigent defense and post-conviction DNA testing procedures, have been reformed in recent years or because the Legislature is considering additional changes to front-end procedures such as interrogations. These efforts are piece-meal and do not necessarily identify systemic failures remaining in the criminal justice system.

The Legislature needs to create a state entity dedicated to examining exonerations and recommending systemic changes because currently there is no adequate mechanism for doing so. The exoneration of some individuals through the judicial or clemency systems does not necessarily force the examination or change of the criminal justice system as a whole, and no other state agencies focus directly on the issue. Innocence projects, such as those at some Texas law schools, focus on individual cases and should not be depended upon to examine systemic issues. A legislatively created innocence commission would express the will of the Legislature that certain issues be examined, put the authority of the state behind its actions, be directly tied to lawmakers with the power to make changes, and make the body more accountable to the public through legislative oversight. Having the governor appoint the members would be in keeping with other state commissions and would allow the members to be independent.

Fears about the commission overreaching its authority are unfounded because HB 166 clearly outlines the commission's powers and duties and limits them to those needed to investigate exonerations. The commission's authorization to contract for research and professional services, including forensic testing and autopsies, would be necessary so that it could adequately investigate cases. The bill would specifically limit these contracts to cases in which there had been exonerations or final adjudications of habeas corpus, ensuring that they would not be used for ongoing cases. The commission would have no enforcement powers.

Other commission authority also would be appropriately limited. For example, its charge relating to examining writs of habeas corpus would allow only for referrals to entities such as the state bar or the State Commission on Judicial Conduct, not for actions by the commission itself. Findings in the commission's reports would be admissible in a court, only according to procedural and evidentiary rules, to ensure that any use of the commission's findings was proper. Assistance from other state agencies would have to be consistent with the commission's duties.

Fears that an innocence commission would erode support for the death penalty are unfounded. The death penalty itself is not a cause of wrongful convictions, which is what the commission would be charged with examining. Under HB 166, the commission would consist of gubernatorial appointees who could be held accountable for their reports and actions. The Legislature would have oversight of the commission and the power to revise or eliminate it if its work strayed from legislative mandates.

The commission's appointed members, limited mission, and legislative oversight would help ensure that it did not become an unwieldy bureaucracy. HB 166 contains a sunset date of 2025 when the commission would be eliminated unless continued by the Legislature, which also would have authority to review, change, or eliminate the commission at any time.

The commission would not cost the taxpayers. The fiscal note estimates no fiscal implications for the state. The bill would allow the commission to accept grants and gifts that could be used to fund its work and would be assisted by the Legislative Budget Board, UT-Austin, and, as needed, other state agencies.

The ability to have other agencies assist the commission would allow state resources to be efficiently leveraged. Other groups also could aid the commission as needed. Any state appropriations for the commission would have to be approved by the Legislature.

**OPPONENTS
SAY:**

It is unnecessary to create an exoneration commission in Texas because the criminal justice and legislative systems in the state have checks and balances that work to achieve justice and to identify and address problems.

It is unfair to use cases that may be decades old to argue for an innocence

commission. In the past two-and-a-half decades, the state's criminal justice system has improved substantially, resulting in a just and fair system that protects the public. For example, the state's Fair Defense Act improved the system that provides attorneys for indigent criminal defendants, and the state now has a system of post-conviction DNA testing that allows defendants to get testing that was not available when they were convicted. In 2011, the Legislature revised the laws dealing with witness identification procedures, a source of numerous exonerations.

Post-conviction exonerations and the Texas criminal justice process could be studied without creating a new governmental entity. An interim study could be conducted by a legislative committee or an existing agency could be given the task. The governor, the attorney general, or another state official could appoint a special committee to study the issue of wrongful convictions. The Texas Criminal Justice Integrity Unit, established in June 2008 by Judge Barbara Hervey of the Court of Criminal Appeals, has studied the state's criminal justice system and issued a report that included recommendations for preventing wrongful convictions on the front end of the system. Innocence projects at the state's law schools already investigate alleged claims of innocence and receive some state funding. Other efforts include those on the local level, including in Dallas County.

HB 166 would invest an innocence commission with inappropriate, overly broad authority. The commission would have to investigate post-conviction exonerations, which are undefined. The authority would not be limited to cases involving a pardon or that had other specific criteria. Examining the approximately 4,300 writs of habeas corpus finalized by the court of criminal appeals in fiscal 2012 could be especially challenging for a commission with no staff. Other state agencies could have difficulties meeting the commission's requirements for assistance.

The bill also appears to give the commission quasi-judicial powers that could fall outside the traditional jurisprudence system. For example, it would be allowed to contract for forensic testing and autopsies in individual cases, powers that would be inappropriate for a state entity tasked with studying convictions that already have been identified as wrongful. With these powers, the commission could become an entity working to prove an exoneration, rather than one studying those that already have occurred. In addition, the bill would allow findings and recommendations of the commission to be admissible in civil or criminal proceedings, which could lead to complications in the courts if the

findings or recommendations were not relevant to whatever case is being tried.

The state should continue to let the court and clemency systems handle individual cases of alleged innocence that could be politicized by an exoneration commission. The Legislature should focus on preventing errors at the front end of the criminal justice system, such as through rules governing interrogations or evidence. Pursuing these types of reforms would be better than spending resources to examine cases that relied on outdated procedures.

An innocence commission could be used as a back-door way to erode support for the death penalty in Texas. It would emphasize relatively few mistakes – especially those from long ago – in a system for which rigorous standards are enforced and extensive opportunities for review afforded. HB 166 would create a commission that could reflect a bias toward eliminating the death penalty, focused only on negative aspects of criminal cases and lacking the traditional adversarial process central to the criminal justice system. This could institutionalize opposition to the death penalty and allow the use of public funds and the weight of the state to further the political goal of eliminating capital punishment, an objective not shared by most Texans.

Creating an innocence commission would unnecessarily add to state bureaucracy and to demands for state funding. It is unclear how such a commission would obtain funds to reimburse members for expenses and to operate. It could be hard to abolish because governmental entities traditionally are difficult to eliminate and tend to grow in scope to justify their continued existence.

OTHER
OPPONENTS
SAY:

It might be better to create a commission composed of elected officials or representatives of the criminal justice system than one consisting of gubernatorial appointees.

NOTES:

The committee amended the bill to specify that the commission can enter into contracts for help in completing its review or investigation of a case only in cases in which there had been an exoneration or final adjudication of a habeas corpus.

SUBJECT: Allowing state employees to donate to fund for human trafficking victims

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira, Smithee

0 nays

3 absent — Giddings, Hilderbran, Sylvester Turner

WITNESSES: For — (*Registered, but did not testify*: Jennifer Allmon, Texas Catholic Conference; Joshua Houston, Texas Impact; Jason Sabo, Children at Risk)

Against — None

On — (*Registered, but did not testify*: Caitriona Lyons, HHSC)

BACKGROUND: Under Government Code, sec. 659.132, a state employee is authorized to make a deduction from each paycheck for the purpose of making a contribution to an eligible charitable organization. State employees may authorize these deductions during the annual state employee charitable campaign.

The Health and Human Services Commission (HHSC) operates a grant program for domestic victims of human trafficking under Government Code, ch. 531, subch. J-1. Grants are awarded to public and nonprofit organizations that provide assistance to this affected group.

DIGEST: HB 432 would enable the HHSC’s grant program for human trafficking victims to be an eligible charitable organization within the state employee charitable campaign. State employees could authorize deductions from their paychecks as contributions to the HHSC for its administration of this grant program.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

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SUPPORTERS
SAY:

Human trafficking is a heinous crime affecting men, women, boys, and girls from abroad, as well as those who are born right here in the United States. HB 432 would simply add HHSC's fund for domestic human trafficking victims to the list of charitable organizations to which state employees could choose to donate.

According to HB 432's fiscal note, operating this program as part of the state's employee charitable campaign would have no cost to the state. Existing HHSC resources would be sufficient to support any additional work resulting from the passage of the bill.

OPPONENTS
SAY:

No apparent opposition.

SUBJECT: Extending liability coverage to next-generation 9-1-1 services

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Simmons
0 nays
2 absent — Cortez, Sheets

WITNESSES: For — Mike Tomsu, Texas 9-1-1 Alliance; (*Registered, but did not testify:* Velma Cruz, Sprint; Lisa Hughes, AT&T; Dale Laine, Texas Cable Association; Richard Lawson, Verizon; Richard Muscat, Bexar Metro 911 Network District; Thomas Ratliff, T-Mobile USA; Shayne Woodard, Texas 9-1-1 Alliance)

Against — None

On — (*Registered, but did not testify:* Kelli Merriweather, Commission on State Emergency Communications)

BACKGROUND: Health and Safety Code, sec. 771.053, provides immunity from liability to a telecommunications service provider engaged in 9-1-1 services for any claim, damage, or loss committed while providing 9-1-1 services, except those arising from acts of gross negligence, recklessness, or intentional misconduct.

Under sec. 771.061, information that a telecommunications provider and certain third parties furnish to a governmental entity as part of a 9-1-1 service is confidential.

Sec. 772.001(6), defines “9-1-1 service” as a telecommunications service through which the user of a public telephone system has the ability to reach a public safety answering point by dialing the digits 9-1-1.

Penal Code, sec. 42.061 makes it an offense for a person who makes a telephone call to 9-1-1 when there is not an emergency and who

knowingly or intentionally remains silent or makes abusive or harassing statements to a 9-1-1 employee. A person may also commit this offense by knowingly allowing his or her telephone to be used by another for such a call. Such an offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Penal Code, sec. 42.062 makes it an offense to interfere with another's ability to place an emergency telephone call. A person also may commit this offense by recklessly rendering unusable a phone that otherwise would be used by another to make an emergency call. This offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), except it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the actor has been previously convicted of this crime.

DIGEST:

CSHB 1972 would expand the limited liability provided to 9-1-1 service providers to include communications service providers, developers of software used in providing 9-1-1 service, and third parties or other entities involved in providing 9-1-1 service. The bill also would extend this protection to the officers, directors, and employees of these providers and associated entities.

The bill would change the definition of a "9-1-1 service" to mean a communications service that connects users to a public safety answering point through a 9-1-1 system. It also would remove several references to "telephone" throughout Health and Safety Code, ch. 771 and ch. 772, and where appropriate would replace them with references to communication devices.

The bill would make confidential the information that a communications service provider was required to furnish to a governmental entity in providing 9-1-1 service. A "governmental entity" would include a regional planning commission, emergency communications district, or public safety answering point. The bill also would protect from disclosure any information that a service provider, third party, or other entity voluntarily furnished at the request of a governmental entity.

The immunity and confidentiality protection would be interpreted to have the same scope as provided by applicable federal law that grants providers or users of 9-1-1 services immunity and protection from liability.

The bill would specify that defining “9-1-1 service” as a communications service did not expand or change the authority or jurisdiction of a public agency or the Public Utility Commission (PUC) over commercial mobile service or wireline service, including voice over internet protocol (VOIP) and related technologies, nor the authority of a public agency or the PUC to assess 9-1-1 fees.

In statutes criminalizing misuse of or interference with 9-1-1 services, CSHB 1972 would include requests for assistance using “an electronic communications device.”

The bill would take effect on September 1, 2013. Penal Code changes would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1972 would modernize the statutory language of the 9-1-1 emergency system to include new technologies that enhance the information available to first responders. Communications technology is developing at an astounding pace, which requires that the statutes referring to them be updated.

By removing technological references that are outdated and limiting, the bill would extend appropriate liability and confidentiality coverage to new types of 9-1-1 service providers, including broadband, internet protocol (IP), VOIP, Session Initiation Protocol (SIP), Short-Message Service (SMS), and other next-generation technologies. Nothing in the bill would change how the state regulates the rates charged or services delivered by communications service providers.

HB 1972 also would update existing statutes that criminalize abusive 9-1-1 calls and interference with these calls. Specific references to these newer technologies in criminal statutes would give them the breadth prosecutors need to properly prosecute these cases.

It would be appropriate to extend liability coverage to software developers, manufacturers, third-party entities, and other entities involved in providing 9-1-1 services because this liability protection historically has been offered to public agencies and private telecommunications providers, such as landline telecoms. Expanding this model to cover the new technologies that now or shortly will be part of the 9-1-1 system simply would continue this approach. Further, it would encourage more communications providers to offer these services to their customers,

increasing the number of people who could rely on 9-1-1 assistance. Expanding this coverage would result in more crimes reported and prevented, as well as greater protection for human lives and property.

**OPPONENTS
SAY:**

HB 1972 inappropriately would extend liability protections to business and corporate entities that are better regulated under a negligence standard. The bill would extend immunity to software developers, manufacturers, third-party entities, and others involved in providing 9-1-1 services, holding them liable only for claims stemming from grossly negligent, reckless, or intentional acts. They should continue to be held to the negligence standard appropriate for private entities.

NOTES:

CSHB 1972 differs from the bill as filed in that it specifies that defining “9-1-1 service” as a communications service would not expand or change the authority or jurisdiction of a public agency or the PUC over commercial mobile service or wireline service, including voice over internet protocol (VOIP) and related technologies, nor the authority of a public agency or the PUC to assess 9-1-1 fees.

The companion bill, SB 1264 by Hancock, was referred to the Senate Business and Commerce Committee on March 13.

SUBJECT: Newborn screening for critical congenital heart disease and other disorders

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Naishtat, S. Davis, Guerra, S. King, Laubenberg,
J.D. Sheffield, Zedler

0 nays

3 absent — Coleman, Collier, Cortez

WITNESSES: For — Charleta Guillory, March of Dimes; Carrie Kroll, Texas Hospital Association; Vi Nguyen-Kennedy, Bless Her Heart; Curtis Popp, American Heart Association; Michael Speer, Texas Medical Association and Texas Pediatric Society; Tracy Sievers; Carl Wolford; (*Registered, but did not testify*: Marisa Finley, Scott & White Center for Healthcare Policy; Eileen Garcia, Texans Care for Children; Rebekah Schroeder, Texas Children's Hospital; Bryan Sperry, Children's Hospital Association of Texas)

Against — Jeremy Blosser; Read King; (*Registered, but did not testify*: Chris Howe)

On — Jann Melton-Kissel, Department of State Health Services

BACKGROUND: Health and Safety Code, sec. 33.011(a-1) requires newborn children be screened for the inherited diseases based on guidelines in either the 2005 American College of Medical Genetics report, "Newborn Screening: Toward a Uniform Screening Panel and System" or in another report with more stringent guidelines. DSHS may also add screenings with the advice of the Newborn Screening Advisory Committee (NSAC).

Sec. 33.017 establishes the NSAC, defines its membership, and charges it with advising DSHS regarding newborn screening policy and additional newborn screening tests.

With the exception of Health and Safety Code, ch. 47, which requires newborn hearing screenings to be conducted at the "point of care" — the birthing facility itself — sec. 33.011(c) requires that screening tests be

performed at DSHS-approved laboratories. In practice, this involves drawing a blood sample from the newborn and sending it to a lab for processing.

Critical congenital heart disease (CCHD) is a congenital heart defect that causes life-threatening symptoms during the first year of life. Screening for CCHD typically occurs in the birthing facility before discharge and involves measuring a newborn's blood oxygen level with a pulse oximeter. CCHD was added to the U.S. Department of Health and Human Services' Recommended Uniform Screening Panel for newborns in 2011.

DIGEST:

CSHB 740 would require newborn screenings for CCHD, update the guidelines for required newborn screenings, authorize physicians to delegate the responsibility for screening tests, and modify the NSAC.

Critical Congenital Heart Disease. CSHB 740 would require that a screening test for CCHD be performed on each newborn in a birthing facility. CCHD testing would be required unless the test had already been performed, the parent declined the screening, the newborn was transferred to another facility before the screening test was performed, or the newborn was discharged within 10 hours with a referral to another birthing facility or health care provider.

The bill would define "birthing facility" to mean any health care facility that offered obstetrical or newborn-care services, including hospitals, birthing centers, and state-operated facilities providing obstetrical services.

DSHS would incorporate advice from the NSAC when authorizing the CCHD screening test. Before requiring any additional CCHD screening tests, DSHS would be required to assess their necessity and costs and to consider NSAC's recommendations on these matters.

Required screenings. CSHB 740 would update the standard for determining which conditions to include in the newborn screening program. The bill would replace the 2005 report by the American College of Medical Genetics with the core and secondary conditions in the December 2011 "Recommended Uniform Screening Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children."

A physician attending a delivery no longer would be personally required

to administer mandatory screening tests to each newborn child, so long as he or she ensured a properly trained person under the physician's supervision administered the tests.

Newborn Screening Advisory Committee. CSHB 740 would amend the NSAC's composition by:

- requiring the membership of at least four licensed physicians, including at least two who specialize in neonatal-perinatal medicine;
- increasing to two the number of hospital representatives;
- requiring the membership of two or more persons who have family members affected by a relevant condition; and
- specifying that the two committee members involved in newborn screening, follow-up, or treatment would have to be health-care providers.

Effective date. The bill would take effect September 1, 2013. As soon as practicable following this date, DSHS would implement the bill's changes to the newborn screening program, and the DSHS commissioner would appoint the additional committee members to the NSAC. Members serving on the committee immediately prior to the effective date would not be subject to the bill's requirements and would serve the remainder of their terms.

**SUPPORTERS
SAY:**

CSHB 740 would improve health outcomes for newborn children, reduce health costs, and improve the functioning of the newborn screening program.

Requiring CCHD testing for all newborns would reduce preventable infant death and injury. CCHD is a leading cause of infant death, and its life-threatening symptoms affect more than 550 Texas babies a year. Even when not fatal, it can result in lifelong disabilities. Screening for CCHD with a pulse oximeter is reliable and can be done as soon as 24 hours after birth. Because medical intervention, such as surgery, is required within the first few hours, days, or months of life, requiring CCHD screening tests at the birthing facility would increase detection and treatment of this disease. Parents opposed to the test would be able to decline it.

Requiring CCHD testing would reduce long-term health care costs. Infants who survive CCHD but sustain severe injuries require elevated levels of

health care during their lives. For example, the Centers for Disease Control and Prevention (CDC) estimates the lifetime cost of a child with an intellectual disability, a possible consequence of CCHD, is \$1 million per child. In comparison, a single pulse oximetry test costs between \$3 and \$15, and likely would be included in most insurance plans' bundled costs for postnatal care. According to the Legislative Budget Board's fiscal note, the provisions of CSHB 740 would result in no significant impact to state or local authorities, even in the short term.

CSHB 740's administrative modifications would improve the newborn screening program's functioning and effectiveness. By more clearly defining the NSAC's makeup and increasing its provider qualifications, the bill would ensure the newborn screening program's stakeholders were represented and that its recommendations were informed and reliable.

Clarifying that physicians could delegate the program's screening tests to those under their authority would align Texas statute with current physician practice and would reduce uncertainty and increase birthing facilities' flexibility in carrying out the required screenings. Statutorily updating the benchmark for required screenings would align Texas statute with current DSHS practice and medical science and signal the Legislature's intent that the newborn screening program stay current with medical and technological developments.

**OPPONENTS
SAY:**

CSHB 740 would be an unwarranted and costly expansion of the government's authority. Although parents in theory would be able to opt-out of the CCHD screening, it is unclear whether in practice the test's opt-out provision would be understood by parents. In effect, the bill would act as a mandate that imposed the government's medical decisions on families.

CSHB 740 would increase health care costs for an unnecessary test. The CDC estimates that nationwide about only 300 infants are discharged from newborn nurseries each year with undetected CCHD, yet even a relatively inexpensive test would result in millions of additional dollars spent annually on screening. This cost would have to be paid through Medicaid, private insurance, or as an out-of-pocket expense. Although DSHS and the NSAC would be required to assess the costs of additional screening tests, there is no requirement that would make cost a limiting or even deciding factor in future screening mandates.

OTHER
OPPONENTS
SAY:

CSHB 740 would not adequately protect Texas newborns from inherited diseases.

The bill should be amended to include the provision in HB 740 as filed generally allowing DSHS to authorize newborn screening tests at the point of care. CSHB 740 would make CCHD screening in a birthing facility the only exception to the newborn screening program's requirement that all screenings be conducted in a DSHS-approved laboratory. This would continue to limit DSHS' flexibility to add new point-of-care screenings as they became available in the future. Requiring legislative approval for each future point-of-care test could delay or even prevent newborns from receiving warranted screenings.

CSHB 740 also would limit the number of infants who receive CCHD screening by exempting home births and allowing parents to opt-out of the screening for non-religious reasons, something the newborn screening program does not permit otherwise.

NOTES:

Unlike HB 740 as filed, the committee substitute would:

- replace “congenital heart defect” with “critical congenital heart disease,” one of its subgroups;
- require CCHD screening for all newborns at birthing facilities, and provide certain exemptions from CCHD screening requirements;
- change the makeup of the NSAC and add procedural clarification for its implementation;
- allow physicians to delegate newborn screening tasks;
- require DSHS and the NSAC to review the necessity, including cost, of additional screenings; and
- define and use throughout the bill the term “birthing facility.”

HB 740 as introduced would have allowed DSHS to authorize screening tests at health care facilities that provide newborn care in addition to at the laboratory.

SUBJECT: Requiring court reporters to transmit transcripts of certain habeas hearings

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Burnam

WITNESSES: For — Virginia Etherly, Dallas County District Clerk; Craig Pardue, Dallas County; (*Registered, but did not testify:* John Dahill, Texas Conference of Urban Counties; Gary Fitzsimmons, Dallas County District Clerk; Jim Jackson, Dallas County; Mark Mendez, Tarrant County; Allen Place, Texas Criminal Defense Lawyers Association)
Against — None

BACKGROUND: Code of Criminal Procedure, art. 11.07 governs the procedure for writs of habeas corpus after a felony conviction imposing a penalty other than death. Under art. 11.07, sec. 3, if the convicting court in such a case holds a hearing to resolve issues of material fact relating to the legality of the writ applicant's confinement, a court reporter is required to transcribe the hearing and prepare the transcript. After the convicting court makes a finding of fact under this section, the court clerk is required to transmit to the Court of Criminal Appeals all official records, including the transcript, used in resolving the issues of fact.

DIGEST: HB 833 would require the court reporter transcribing a hearing under Code of Criminal Procedure, art. 11.07(3) to transmit the transcript to the clerk of the convicting court immediately upon its completion.
The bill would take effect September 1, 2013, and would apply only to applications for a writ of habeas corpus filed on or after that date.

SUPPORTERS SAY: HB 833 would clarify and close a loophole in current law. Court reporters are currently required to prepare certain habeas hearing transcripts but not

to transmit them to anyone, while the clerk of the convicting court is required to transmit all records, including the transcripts, to the Court of Criminal Appeals. Under the current system, court clerks can be held in contempt for not transmitting documents that they may not have in their possession.

Clerks often waste time and resources contacting court reporters and attempting to obtain the transcripts from them. Some court reporters are unclear about where to send transcripts once they are completed in these kinds of hearings. Some county clerks have encountered problems with court reporters transmitting the transcripts directly to the Court of Criminal Appeals and being forced to submit incomplete records themselves. Occasionally, clerks will receive writs of mandamus from the Court of Criminal Appeals to remedy this omission. HB 833 would solve this logistical loophole and ensure that clerks had all the documents they were legally required to transmit.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, SB 252 by West, was passed by the Senate by a vote of 30-0 on March 27 and referred to the House Committee on Criminal Jurisprudence on April 4.

SUBJECT: Reducing token trailer registration requirements

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Lavender, McClendon, Pickett, Riddle

0 nays

2 absent — Y. Davis, Harper-Brown

WITNESSES: For — Les Findeisen, Texas Motor Transportation Association
(*Registered, but did not testify:* Allen Beinke, Texas Aggregates and Concrete Association; Jay Propes, SouthWestern Association)

Against — None

On — (*Registered, but did not testify:* Randy Elliston, Texas Department of Motor Vehicles)

BACKGROUND: Token trailers are semitrailers that weigh more than 6,000 pounds. Transportation Code, ch. 502 requires a token trailer's license plate to include the expiration date of its registration period. Transportation Code, sec. 621.002 requires the token trailer's registration receipt to be carried with the trailer when in use on a public highway.

A recent rule adopted by the Texas Department of Motor Vehicles (TxDMV) allows for token trailers to use non-expiring license plates. Token trailers may be registered individually or as a part of a commercial fleet, which is a group of at least 25 motor vehicles or trailers that are owned by a business entity.

DIGEST: CSHB 511 would require the TxDMV to issue a license plate for token trailers that did not expire or require annual registration insignia. The alphanumeric pattern for the license plate would remain on the token trailer for as long as its registration was renewed or until the trailer was removed from service or sold. The bill would end the requirement to carry a token trailer's registration receipt with the trailer when it was on a public highway. The bill would apply to token trailers registered individually or

as part of a commercial fleet.

The TxDMV would adopt rules to implement the bill as soon as practicable after the bill took effect.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 511 would reduce burdensome token trailer registration requirements that discourage semitrailer owners from registering their trailers in Texas. Currently, companies must keep the physical registration receipts in the pulling unit of the semitrailers when in use. This can be difficult to comply with because token trailers frequently transfer between different pulling units.

CSHB 511 also would codify a TxDMV rule that allows token trailers to use non-expiring plates. Placing the provision of this administrative rule in statute would relieve companies of the burden of tracking down their token trailers, which can be spread throughout the country and even internationally, to change the plates or registration insignia.

Many companies simply register their semitrailers in states without the burdensome requirements under current law. Eliminating these requirements would attract more trailer registrations to Texas and would help keep the registrations Texas already has. Because the bill would not adjust the registration fees, it would allow the revenue generated by trailer registration, which goes to the Highway Trust Fund, to increase.

Registration records are kept electronically, so the physical registration receipt and expiration date on the license plate are no longer necessary. Eliminating these requirements for token trailers would not impair the government's ability to regulate them.

**OPPONENTS
SAY:**

CSHB 511 could make verifying the proper registration of token trailers more difficult for law enforcement officers. No longer requiring the physical registration receipt to be with the token trailer could inconvenience some law enforcement officers who may not have the proper equipment to electronically check registration. Removing the expiration date from the license plates of token trailers also could make it harder for law enforcement officers to identify token trailers that did not

have current registration.

NOTES:

The committee substitute differs from the bill as filed in that CSHB 511 would:

- include token trailers registered with a commercial fleet in the proposed changes;
- end the requirement to carry a token trailer's registration receipt when the trailer was on a public highway; and
- remove a requirement in the filed bill that would have required TxDMV to allow a person to register a non-commercial fleet token trailer on the department's Internet website.

The companion bill, SB 685 by Carona, was left pending in the Senate Transportation Committee on March 6.

SUBJECT: Revising regulations for colonias and certain economically distressed areas

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 5 ayes — Deshotel, Frank, Goldman, Paddie, Simpson

1 nay — Herrero

3 absent — Walle, Parker, Springer

WITNESSES: For — Kyndel Bennett, Scot Campbell, Buddy Garcia, Anthony Gray, Jack McClelland and Richard Ruppert, Texas Land Developers Association; Donald Lee, Texas Conference of Urban Counties (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Shanna Igo, Texas Municipal League; Scott Norman, Texas Association of Builders)

Against — Emily Rickers, Alliance for Texas Families; Raul Sesin, Hidalgo County; Carlos Yescas, Las Lomitas; Manuela Luna; Francisco Martinez; Ira Parker (*Registered, but did not testify*: Deena Perkins, Texas Association of Community Development Corporations)

On — David Preister, Office of the Attorney General; Cyrus Reed, Lone Star Chapter, Sierra Club; Marlene Chavez; (*Registered, but did not testify*: Joe Reynolds, Texas Water Development Board)

BACKGROUND: Colonias are low-income communities in unincorporated subdivisions along the Texas-Mexico border that lack paved roads and basic services such as water, wastewater treatment, and electricity. The Office of the Attorney General identifies more than 2,000 colonias in 31 border-area counties, and state and federal entities estimate their population at roughly 400,000.

Local Government Code, ch. 232, subch. B contains requirements for subdividing, advertising, selling, and connecting utilities to residential subdivision lots in counties that are within 50 miles of the border, as well as Nueces County. Under subch. B, a subdivider may not sell or lease land in a subdivision unless a plat is first approved by the county commissioners court. Subdivisions with lots 10 acres or more are exempt

from the requirements.

Subchapter C contains platting requirements for residential subdivisions that are defined as economically distressed under the Water Code but are not located within 50 miles of the border.

DIGEST:

CSHB 611 would modify requirements governing subdivision development in counties covered under subchs. B and C of Local Government Code, ch. 232, as well as economically distressed areas under the Water Code.

Earnest money. CSHB 611 would permit property owners and buyers to enter into an earnest-money contract of up to \$250 for the sale of land under subchapter B before the plat was finally approved and recorded. The seller or subdivider would have to be licensed, registered, or otherwise credentialed as a residential mortgage loan originator under applicable state and federal law and the Nationwide Mortgage Licensing System and Registry. An earnest-money contract would have to contain a specific statement laid out in the bill and other warnings specified in current law.

An earnest-money contract would be void if the plat for the land had not been finally approved and recorded within 90 days of when the contract was signed, unless the buyer agreed to extend the period. Only one extension would be permissible. A seller would have to refund all earnest money paid for a voided contract within 30 days. A seller who did not refund the money would be subject to legal action for damages up to three times the earnest money amount plus reasonable attorney's fees. Prior to entering into an earnest-money contract, written notice with specific information about the contract would have to be provided to the attorney general and the local government responsible for approving the plat.

Cure provisions. The bill would require that before a civil action could be filed against a subdivider, the subdivider would have to be notified in writing about the alleged violation and given 90 days to cure the defect before enforcement action could proceed. This would not apply to civil enforcement actions brought by the attorney general, district attorney, or county attorney if:

- the alleged violation or threatened violation posed a threat to a consumer or to the health and safety of any person; or
- delay in bringing the enforcement action could cause a financial

loss or increased costs to any person, including the county.

The cure provision would not apply in cases of repeat violations and would not apply to an action filed by a private individual. It would apply in counties covered under subchapters B and C, and to other economically distressed counties designated by the Water Code, ch. 16 subch. J.

Advertising property. CSHB 611 would repeal Local Government Code, sec. 232.021(9), which includes “offer to sell” in the definition of “sell.” The bill would require that any advertising for platting of a subchapter B property that was not finally approved include notice that:

- no contract for deed, other than the \$250 earnest-money contract allowed by the bill, could be accepted until the plat was approved; and
- the land could not be possessed or occupied until it received final approval from the county commissioners court and all water and sewer service facilities for the lot were connected or installed according to the Water Code.

Other provisions. CSHB 611 would amend both subchapter B and C to require platting for subdivisions that created at least one lot of five acres or less and would give county commissioners courts the option of requiring plats where at least one lot was more than five acres but no more than 10 acres.

A person in a county covered under subch. C who purchased a lot without water and sewer services as required could bring suit in county district court to declare the sale void, recover the purchase price, require the subdivider to plat or amend the existing plat, and seek other damages.

CSHB 611 would require that counties and cities adopt model subdivision rules before applying for grant funds offered under the Water Code to provide water and wastewater infrastructure for existing colonias.

The bill would prohibit counties from imposing a higher standard for streets or roads in a subdivision than it applied to construction of new county streets or roads.

The bill would take effect September 1, 2013. Changes to plat applications and enforcement actions in the bill would apply on or after that date.

SUPPORTERS
SAY:

CSHB 611 would recognize the enormous strides Texas has made to address the factors that contributed to the proliferation of colonias and would take some key steps in applying to border counties standards that prevail elsewhere. Broad consensus exists among stakeholders that subchapter B regulations have been successful in preventing the spread of new colonias. There is equally broad agreement, however, that some of the more stringent regulations are no longer necessary and are poorly suited to new financial realities. In addition, rapid population growth in border regions calls for new approaches to ensure development standards accommodate new business realities while protecting health and safety.

CSHB 611 would provide adequate safeguards to ensure all infrastructure necessary for convenience, health, and safety would be available while permitting the market to offer affordable housing opportunities for Texans of all income levels. By no means would the bill increase the likelihood of bad practices among subdividers, as it does not have any bearing on model subdivision rules.

The bill would help end separate regional standards and contribute to the development of a uniform statewide standard for development in unincorporated areas. While colonias have historically been viewed as a border problem, irregularly and poorly developed subdivisions can be found throughout Texas. If the Legislature has concerns about development in unincorporated counties, then it should approach this issue with an eye toward statewide solutions that do not single out a particular geographic area for special treatment.

Earnest-money contracts. CSHB 611 would help eliminate some of the regulatory roadblocks keeping developers from obtaining needed financing. Current restrictions prohibit developers from entering earnest-money agreements that indicate a market demand, so financial institutions cannot make sound business decisions whether to extend credit. Availability of financing will be a topic of ongoing concern as the housing market continues to emerge from the recent downturn. Limiting access to credit penalizes developers who want to follow the rules.

CSHB 611 would ensure against potential abuses by requiring that sellers meet strict standards on originating loans created after the meltdown of the subprime mortgage market. The standards for being a qualified mortgage originator are established at the state and federal level and provide a strong

protection against abusive practices. The \$250 limit on earnest-money contracts would allow low-income Texans to commit to a longer agreement without risking a large amount of money.

Advertising. Provisions in CSHB 611 revising the advertising standards would assist developers and potential homebuyers in identifying and creating a market for new subdivisions. Advertising and access to earnest-money contracts would show financial institutions that a demand exists for these homes. The inability to advertise properly generates greater uncertainty, which ultimately is transformed into higher costs that are passed on to the consumer.

Cure provisions. Allowing developers a 90-day period to correct minor defects in the platting process would add to market viability of these affordable properties. CSHB 611 would not prevent enforcement actions when the health or safety of any person was involved and would preclude delays in addressing repeat or ongoing potential violations. It would, however, limit a developer's exposure to possibly ruinous penalties for minor problems, such as mistakes in translating technical information on the filed plat into Spanish. Such technicalities should be allowed to be addressed without penalty.

The attorney general already must exercise discretion in using limited resources to pursue violations in the colonias regulations. Providing a notice and 90-day cure period would protect developers acting in good faith from expensive and time-intensive legal action.

Other provisions. CSHB 611 would make the five- and 10-acre standards for filing plats uniform in all Texas counties. It would clarify a slight difference in the statutes that requires border counties to exempt subdivisions only where all plots were greater than 10 acres, while the rest of the state can exempt subdivisions of exactly 10 acres or larger.

OPPONENTS
SAY:

Texas has spent millions in taxpayer money to remedy the health and safety dangers posed by colonias along the border. By all accounts, the subchapter B rules have worked, and every county that has enacted and enforced them has prevented the establishment of more colonias. It is expensive to retrofit and remediate problems when a developer cuts corners to save money and earn higher profits at the expense of low-income homebuyers. CSHB 611 could jeopardize progress in limiting the proliferation of colonias by relaxing some regulations that govern what

developers may do in economically distressed areas of the state.

Earnest-money contracts. CSHB 611 provisions that would allow even small installment payments on unplatted land could signal a return to the days when some unscrupulous developers would collect money for land, make empty promises to buyers and local officials and disappear once the lots were sold. Earnest-money contracts, even in small amounts, could create a perceived obligation to purchase an as yet unseen product. The authority to enter into such contracts was curtailed in these areas for good reason; in the past, various conditions gave rise to widespread abuse. Granting an earnest-money option is not worth risking a return to former practices in these economically sensitive regions.

Advertising. Much like the earnest-money contract provisions, the bill could allow developers to advertise and sell lots in poorly conceived developments without ensuring that the lots would be made habitable.

Cure provisions. Allowing a 90-day cure period could allow developers to ignore colonias regulations until they finally got caught and regardless of whether they knowingly violated the law. The provision could allow developers to delay compliance by dragging their feet on making corrections to violations brought to their attention. Once a suit is filed, there is ample opportunity for a developer to settle outside of court. Allowing a 90-day cure period is unnecessary. There is scant evidence that developers are being slapped with severe penalties for trivial violations. Providing the 90-day cure period creates unnecessary risks with few benefits.

Other provisions. There is no indication that problems that have plagued subdivisions with smaller lots in border and economically distressed regions would not also apply to those with larger lot sizes. Releasing subdivisions between five and ten acres from the requirement to file a plat would unnecessarily remove this safeguard for larger-scale developments.

NOTES:

The committee substitute differs from the bill as filed in that it would delete a provision in the original that would have allowed the attorney general to develop rules on the notice required to be provided before entering into an earnest-money contract.

The 82nd Legislature in 2011 considered similar legislation, HB 1604 by Guillen, which passed the House but died in the Senate.

SUBJECT: Making a false alarm or report to an institution of higher education

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Burnam

WITNESSES: For — (*Registered, but did not testify*: Clifford Herberg, Bexar County Criminal District Attorney's Office; John Hrcir, City of Austin; Carol McDonald, Independent Colleges and Universities of Texas, Inc.; James McLaughlin, Texas Police Chiefs Association)

Against — None

On — Rodney McClendon, Texas A&M University; (*Registered, but did not testify*: Gerald Harkins, University of Texas at Austin)

BACKGROUND: Penal Code, sec. 42.06 makes reporting a false bombing, fire, offense, or other emergency a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). The offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if it involves a public primary or secondary school, public communications, public transportation, a public water, gas, or power supply, or other public service.

DIGEST: CSHB 1284 would add public and private institutions of higher education to the list of entities to which making a false alarm or report of a bombing, fire, or other emergency was a state jail felony.

The bill would require institutions of higher education to notify all incoming students as soon as practicable of the penalty for making a false alarm or report. Institutions that determined that notifying incoming students was not feasible would not be required to comply.

Institutions of higher education would have to notify all enrolled students by October 1, 2013.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply to an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1284 would increase the penalty for making a bomb threat or other false report of an emergency to an institution of higher education, which appropriately would reflect the serious nature of this crime. Making such a false report is dangerous, expensive, and detracts from the educational goals of Texas' colleges and universities. Complacency resulting from the high number of false alarms poses a major public safety risk that could end tragically. By stiffening the penalty for this offense, the bill would increase the deterrent against this increasingly common problem in the future.

The incidence of false bomb threats has increased significantly at Texas' institutions of higher education, including eight already this academic year. The real fear is that institutions and students may become complacent in their response to these to false alarms and that a real incident could end up causing even more harm. Stiffening the penalty would be a constructive step toward reducing the number of false threats. Texas statute already makes it a state jail felony to make a false threat at K-12 schools, and threats to colleges and universities should carry the same penalty.

Evacuating buildings — and sometimes an entire campus with more than 60,000 faculty, staff, and students in the case of Texas' largest universities — can cost an institution millions of dollars and incalculable losses in educational value. The scenarios vary, depending on the extent of an evacuation and campus search, but one university estimated that a false claim causing a full evacuation costs the university around \$374,000 an hour in wasted class time, employee benefits, emergency response, and other related costs. The losses associated with cancelled lectures, closed libraries, and lost research time are impossible to quantify. While some critics recognize that the bill would not deter all future false alarms, CSHB 1284 would send a strong message that these threats are unacceptable. Even a small reduction would be a significant step toward increasing safety and reducing distractions.

By including a provision requiring universities to notify students of the

penalty, the bill would include a helpful educational component. While the notification requirement would not inform all potential violators, it would be the best way to begin publicizing the increased penalty so that it did not become just an obscure part of the Penal Code. Critics who argue that the bill would place an unnecessary burden on universities and colleges should note the flexibility the bill would give institutions to tailor the notification requirements to their own circumstances and opt out of notifying incoming students if it were not feasible.

OPPONENTS
SAY:

While CSHB 1284 is well intended, the bill would burden college and university administrations with a notification requirement outside the scope of education. In addition, the notification requirement would not be effective. In many cases when bomb threats are falsely reported at universities, including several instances at Texas A&M, it turns out not to have been a student who made the threat.

NOTES:

CSHB 1284 differs from the bill as filed in that it would require institutions of higher education to notify enrolled students of the penalty for a false alarm and to notify incoming students unless the institution determined it was not feasible. The committee substitute also could take immediate effect.

SUBJECT: Higher education institutions investing in technology commercialization

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 6 ayes — J. Davis, Vo, Y. Davis, Perez, E. Rodriguez, Workman
0 nays
3 absent — Bell, Isaac, Murphy

WITNESSES: For — Brett Cornwell, Texas A&M System; (*Registered, but did not testify*: Bill Hammond, Texas Association of Business; Wendy Reilly, TechAmerica)
Against — None
On — Bryan Allinson, The University of Texas System

BACKGROUND: Education Code, sec. 153.006 allows public institutions of higher education to accept, in exchange for certain intellectual property rights, equity interests in companies created through their centers for technology development and transfer. These institutions of higher education can also accept equity interests in these companies as consideration for the provision of monetary, business, scientific, engineering, or other technical services.

DIGEST: CSHB 2051 would amend Education Code, sec. 153.006 to allow public institutions of higher education to accept a convertible debt instrument in exchange for intellectual property rights. Convertible debt also would be acceptable consideration for a higher educational institution's provision of monetary, business, scientific, engineering, or other technical services. In either transaction, a combination of convertible debt and equity also would be acceptable consideration.

SUPPORTERS SAY: CSHB 2051 would provide another tool for universities to achieve the goal of commercializing intellectual property. As companies are newly created to successfully commercialize a university's research, providing a university stock ownership can present problems. In many cases, newly

created companies have not yet undergone an independent valuation. Therefore, universities should have the option of gaining an investment position in these early stage companies by accepting convertible debt until the companies are valued at a later time.

There are differing opinions as to whether universities can accept convertible debt from companies under current state law. With the Emerging Technology Fund, for example, convertible debt investments are permitted to incentivize companies collaborating with research institutions. The bill would make clear in statute that universities could use this option. This change would further the research efforts of higher education institutions and spur economic development through increased technology commercialization.

Faculty interested in performing research and teaching at Texas universities would go elsewhere if the bill sought to develop financial metrics for evaluating the productivity of research. Critics who favor developing such a metric do not appreciate the strong link between teaching and research. It would be extremely difficult to separate the teaching and research functions of professors and independently measure the productivity of each. In addition, basic research frequently involves early stage discoveries that, while profound, may not result in a commercial product in the near term. The fact that basic research may not yield immediate financial return in no way diminishes the value of a researcher's work.

**OTHER
OPPONENTS
SAY:**

While higher education research leading to important discoveries should be encouraged, productivity in this area is lacking at Texas universities. On a number of Texas campuses, the income from patents does not even cover the costs of running centers for technology development and transfer. Before encouraging further investment in technology commercialization, the bill should require universities to develop measures to evaluate the return on student- and taxpayer-financed faculty time spent on research.

NOTES:

CSHB 2051 differs from the bill as filed in that the committee substitute would allow higher education institutions to also accept a combination of convertible debt and equity.

SUBJECT: TCEQ's authority to curtail or transfer water rights in emergency shortage

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: For — (*Registered, but did not testify:* Larry Casto, City of Dallas; Gary Gibbs, American Electric Power Co.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corp.; Stephanie Simpson, Texas Association of Manufacturers; CJ Tredway, Texas Oil & Gas Association; Julie Williams, Chevron USA, Inc.)

Against — None

On — Regan Beck, Texas Farm Bureau; Robert Martinez, Texas Commission on Environmental Quality

BACKGROUND: The State of Texas holds surface water in trust for the public good. The Texas Commission on Environmental Quality (TCEQ) is charged with issuing rights for the use of the surface water and the management of those rights.

The prior appropriations doctrine which states “first in time, first in right” is used to manage surface water rights in Texas and gives superior rights to first users of the water. The most senior water rights are served first during times of drought, but domestic and livestock uses are superior to any appropriated rights. Water rights are suspended or curtailed by priority date, with the most recently issued – or “junior” – priority users suspended before senior water rights in the area. A water right holder not receiving water to which the right holder is entitled may call on the TCEQ to enforce the prior appropriations doctrine. This is referred to as a “senior call.” Due to severe drought conditions, the TCEQ has received numerous senior calls. To protect public health and welfare, water rights with municipal uses or for power generation have not been suspended when

there was not an alternative source of water available.

Texas Water Code, sections 11.053 and 11.139 address the TCEQ's authority in drought or emergency conditions. The 82nd Legislature adopted sec. 11.053 as part of the TCEQ's sunset legislation, HB 2694 by W. Smith, in response to priority calls by senior water right holders. It was intended to confirm the TCEQ's authority to take emergency action in response to such senior calls. Sec. 11.053 allows the TCEQ executive director, by order and according to the priority of water rights, "first in time, first in right," to temporarily suspend surface water rights or adjust the diversions of water during a drought or emergency shortage. In ordering a suspension or reallocation, the TCEQ must ensure that the action taken maximizes the beneficial use of water, minimizes the impact on water rights holders, prevents the waste of water, and conforms to preference of use as much as possible, with the highest preference being for municipal purposes.

Under rule, the TCEQ requires water rights' holders to demonstrate water conservation measures as well as efforts to secure other sources of water. TCEQ rule also allows the executive director to consider public health and safety concerns when ordering curtailments.

Sec. 11.139 addresses the TCEQ's authority to deal with water emergencies in several ways, including a temporary transfer of water to meet emergency municipal or domestic water supply needs. If there are no feasible alternatives and an imminent threat to public health and safety exists, a retail or wholesale water supplier, regardless of their priority date, may request an emergency authorization from the TCEQ for the temporary transfer of water from a non-municipal water right holder. This may require that the TCEQ take water from another water right holder. A party granted an emergency authorization for a temporary transfer is liable to the owner of the water right for the fair market value of the water transferred as well as for damages caused by the transfer. If the parties do not agree on the amount due, or if full payment is not made within 60 days of the termination of the authorization either party can file a complaint with the TCEQ to determine the amount due. After exhausting all administrative remedies with the TCEQ, the owner of the water right can file suit in district court to recover or determine the amount due. The prevailing party in a suit is entitled to recover court costs and reasonable attorney fees.

DIGEST: CSHB 2720 would add language to the TCEQ's authority to adjust water

diversions to specify that such adjustments may be made to address an imminent hazard to the health, safety, or welfare of the public.

The bill also would provide that emergency water transfers could not be granted by the TCEQ until compensation had been agreed to by the petitioner for the emergency transfer and the water right holder from whom the use was to be transferred. This would not apply to a suspension or an adjustment ordered by executive director of the TCEQ.

The bill also would change the title of Water Code, sec. 11.053, to TCEQ's "authority to suspend or adjust water rights during periods of drought or water shortage." The bill also would change the title of Water Code, sec. 11.139 to "request to transfer water temporarily."

CSHB 2720 would take effect September 1, 2013.

**SUPPORTERS
SAY:**

It is the state's responsibility to honor the prior appropriations doctrine by administering water rights as they relate to each other — with the oldest rights given priority — while also reflecting the actual conditions in the field, including public health and safety. CSHB 2720 would clarify the TCEQ's authority when responding to senior calls as well as requests for water transfers as a solution to an emergency water shortage.

There are concerns that specifying that adjustments to water diversions may be made to address the health, safety, or welfare of the public would effectively exempt municipal rights from a senior call regardless of their priority date, resulting in a taking of a vested property right from a senior water right holder. CSHB 2720 would not challenge the property interest on an issued water right, its place in line in relation to others, or the ability of its owners to sell it. On the contrary, in responding to senior calls, a prior appropriation water right is actually protected. Surface water in Texas is state-owned water that is held in trust for the public good. A surface water right does not give ownership of the water, just the right to use it. The issued water right grants a water rights' holder a property interest in relation to other holders. This is known as "first in time, first in right." However, the issued rights do not guarantee water and are conditioned by water being available. Even the most senior water right is still second in line to permit-exempt domestic and livestock uses.

CSHB 2720 would appropriately clarify that compensation would not apply to a suspension or adjustment ordered by the TCEQ's executive

director. Sections 11.139 and 11.053 of the Water Code address two separate issues regarding the TCEQ's authority in drought and emergency conditions. Sec. 11.139 is about compensation in the transfer of water between users, whereas sec. 11.053 relates to the state's response to a call for the protection of a senior water right. Administration of a water right is based on the condition of water being available. When water is unavailable, the prior appropriation doctrine determines who gets cut off first. Compensation in that instance is not contemplated.

**OPPONENTS
SAY:**

CSHB 2720 could cause further confusion and conflict over the TCEQ's authority to manage the surface water rights' priority system in the event of a senior call. It would do this by codifying the TCEQ rule to consider public health and safety concerns when ordering curtailments and by ruling out compensation of senior water rights' holders for their loss of water rights.

Texas has long held a priority system of water allocation known as "first in time, first in right," where senior water rights' holders have a superior right to junior water rights' holders. However, TCEQ rule allows the executive director to consider public health and safety concerns when ordering curtailments. In a recent order, TCEQ cited the need to protect public health and safety for exempting municipalities and power generators from curtailment even though their rights were junior to many senior water rights' holders.

Water rights' holders rely on the surety of water rights as vested property rights to know how water is allocated during water shortages. Codifying the TCEQ rule to consider public health and safety concerns when ordering curtailments would effectively give preference to municipal use regardless of the prior appropriations doctrine. Further, allowing junior water rights' holders to divert water for public health and safety, while senior water rights' holders are curtailed, would be a regulatory taking of vested property rights. Unless senior water right holders were fairly compensated, the TCEQ could be taking a vested property right without compensation.

Water rights' permits, once issued by the TCEQ and put to beneficial use by the permit holder, are vested property rights. While a surface water right does not give ownership of the water, it does give the water right holder a vested right to use the water.

OTHER
OPPONENTS
SAY:

CSHB 2720 could limit the TCEQ's ability to respond to senior calls for water rights' holders in a flexible manner if adjustments can be made only if there is an imminent hazard to the health, safety, or welfare of the public.

NOTES:

CSHB 2720 would not have a significant fiscal implication to the state.

The committee substitute differs from the original bill by providing that an adjustment of diversions of water may be ordered to address an imminent hazard to the health, safety, or welfare of the public, rather than just the imminent threat to public health.